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## State v. Jones Respondent's Brief Dckt. 44122

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LAWRENCE G. WASDEN  
Attorney General  
State of Idaho

PAUL R. PANTHER  
Deputy Attorney General  
Chief, Criminal Law Division

LORI A. FLEMING  
Deputy Attorney General  
P.O. Box 83720  
Boise, Idaho 83720-0010  
(208) 334-4534

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 44122
Plaintiff-Respondent,	)	
	)	Ada County Case No.
v.	)	CR-2015-12079
	)	
QUAYD JOHN CHARLES JONES,	)	
	)	RESPONDENT'S BRIEF
Defendant-Appellant.	)	
_____	)	

Issue

Has Jones failed to establish that the district court abused its discretion by imposing concurrent unified sentences of 10 years, with three years fixed, for burglary and 28 years, with three years fixed, for lewd conduct with a minor under 16?

Jones Has Failed To Establish That The District Court Abused Its Sentencing Discretion

In the early morning hours of August 21, 2015, Kelly Blakley was awakened by the sound of a stranger (Jones) attempting to enter her residence through a window.

(PSI, pp.112-13.<sup>1</sup>) Kelly “got up and asked, ‘Who is that?’ ... several times, with no answer.” (PSI, p.113.) She subsequently heard her small dogs “barking toward the side door” and, when she went to the side door, she saw Jones standing there. (PSI, p.113.) Kelly told Jones to leave; Jones responded by asking her “if she wanted to go behind the house and have some fun.” (PSI, pp.112-13.) Kelly again told Jones to leave and attempted to direct him toward the street; however, Jones “grabbed her in a bear hug-like grasp” and “squeezed her and lifted her off the ground.” (PSI, p.114.) Kelly “began screaming for him to stop. She was initially unable to break his grasp, but was eventually able to ‘squirm’ away.” (PSI, p.114.) Jones “grabbed for” Kelly again, causing her to fall down the stairs leading to the ground outside. (PSI, p.114.) She got up and ran toward the front door, and as she was running, Jones “was still trying to grab her”; however, Kelly was able to get inside the residence, locked the door, and contacted the police. (PSI, p.114.) Kelly sustained bruising to her arms and told officers “she felt [Jones’] intentions were to have her have sexual relations with him based on his comments and forcefully grabbing her.” (PSI, pp.112, 114, 219.)

After he left Kelly’s residence, Jones proceeded to another residence in the area, entered through the front door, and found two young girls, ages nine and 10, asleep on the living room floor. (PSI, pp.4, 110.) Jones sat down on the floor next to the children, “began touching” the nine-year-old, and “tried to pull her underwear off”; however, the child stopped him by kicking him “in the face.” (PSI, pp.110, 146, 149.) Jones

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<sup>1</sup> PSI page numbers correspond with the page numbers of the electronic file “JONES 44122 psi.pdf.”

subsequently began “groping” and kissing the 10-year-old girl, removed her shorts and underwear, performed oral sex on her, and digitally penetrated her anus. (PSI, pp.110, 149.) The girls were “too frightened to scream,” and the older child was unsuccessful in her attempts to get away from Jones “because he ‘was holding’ her.” (PSI, p.149.) She eventually told Jones that she “‘had to go to the bathroom’” and he “asked if he could come with her. She told him ‘no,’” “‘speed walked’ to the bathroom,” and locked the door. (PSI, p.150.) Jones followed her to the bathroom and “banged on the door for a minute and then ran outside.” (PSI, p.150.) Jones threatened to “come back and kill” the girls “if they told anyone.” (PSI, p.145.) The children saw Jones “grab a scooter in the yard” as he was leaving; they then “began to scream and yell.” (PSI, p.146.) The girls’ mother contacted the police and the 10-year-old child subsequently underwent a sexual assault examination, which revealed the presence of semen in her rectum. (PSI, pp.145, 168, 279.)

A grand jury indicted Jones for battery with the intent to commit a serious felony, attempted burglary, burglary, lewd conduct with a minor under 16, and sexual abuse of a child under the age of 16 years. (R., pp.31-34.) Pursuant to a plea agreement, Jones pled guilty to burglary and to lewd conduct with a minor under 16, and the state dismissed the remaining charges. (R., p.71.) The district court imposed concurrent unified sentences of 10 years, with three years fixed, for burglary and 28 years, with three years fixed, for lewd conduct with a minor under 16. (R., pp.84-88.) Jones filed a notice of appeal timely from the judgment of conviction. (R., pp.92-94.)

Jones asserts his sentences are excessive in light of his substance abuse, desire for treatment, support from family and friends, and purported remorse. (Appellant's brief, pp.3-6.) The record supports the sentences imposed.

The length of a sentence is reviewed under an abuse of discretion standard considering the defendant's entire sentence. State v. Oliver, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007) (citing State v. Strand, 137 Idaho 457, 460, 50 P.3d 472, 475 (2002); State v. Huffman, 144 Idaho 201, 159 P.3d 838 (2007)). It is presumed that the fixed portion of the sentence will be the defendant's probable term of confinement. Id. (citing State v. Trevino, 132 Idaho 888, 980 P.2d 552 (1999)). Where a sentence is within statutory limits, the appellant bears the burden of demonstrating that it is a clear abuse of discretion. State v. Baker, 136 Idaho 576, 577, 38 P.3d 614, 615 (2001) (citing State v. Lundquist, 134 Idaho 831, 11 P.3d 27 (2000)). To carry this burden the appellant must show that the sentence is excessive under any reasonable view of the facts. Baker, 136 Idaho at 577, 38 P.3d at 615. A sentence is reasonable, however, if it appears necessary to achieve the primary objective of protecting society or any of the related sentencing goals of deterrence, rehabilitation or retribution. Id.

The maximum prison sentence for burglary is 10 years. I.C. § 18-1403. The maximum sentence for lewd conduct with a minor under 16 is life in prison. I.C. § 18-1508. The district court imposed concurrent unified sentences of 10 years, with three years fixed, for burglary and 28 years, with three years fixed, for lewd conduct with a minor under 16, both of which fall well within the statutory guidelines. (R., pp.84-88.) At sentencing, the state addressed the egregious nature of the offenses, the harm done to the victims, Jones' ongoing substance abuse and criminal offending, his history of

violating the terms of community supervision, his failure to rehabilitate or be deterred despite prior treatment opportunities and legal sanctions, his poor conduct in jail while this case was pending, his high risk to sexually reoffend, and his low amenability to sex offender treatment. (4/7/16 Tr., p.33, L.8 – p.40, L.18 (Appendix A).) The district court subsequently articulated the correct legal standards applicable to its decision and also set forth its reasons for imposing Jones' sentences. (4/7/16 Tr., p.52, L.6 – p.64, L.6 (Appendix B).) The state submits that Jones has failed to establish an abuse of discretion, for reasons more fully set forth in the attached excerpts of the sentencing hearing transcript, which the state adopts as its argument on appeal. (Appendices A and B.)

#### Conclusion

The state respectfully requests this Court to affirm Jones' convictions and sentences.

DATED this 31st day of October, 2016.

/s/ Lori A. Fleming  
LORI A. FLEMING  
Deputy Attorney General

VICTORIA RUTLEDGE  
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 31st day of October, 2016, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

MAYA P. WALDRON  
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: [briefs@sapd.state.id.us](mailto:briefs@sapd.state.id.us).

\_\_\_\_\_  
/s/  
LORI A. FLEMING  
Deputy Attorney General

## APPENDIX A



<p style="text-align: right;">33</p> <p>03:23PM 1 arrive.</p> <p>03:23PM 2 THE COURT: Okay.</p> <p>03:23PM 3 MRS. GUZMAN: We would also ask for a</p> <p>03:23PM 4 no-contact order with the two minor victims in</p> <p>03:23PM 5 this case, as well as Kelly Blakley, the adult,</p> <p>03:23PM 6 and also with Avalon Hardy. And that there be no</p> <p>03:23PM 7 exceptions.</p> <p>03:24PM 8 Your Honor, this case was a hard one</p> <p>03:24PM 9 because when these two little girls, nine and ten,</p> <p>03:24PM 10 came in to meet with me they are polar opposites.</p> <p>03:24PM 11 They are both very, very tiny. The youngest one,</p> <p>03:24PM 12 a total spitfire. And the older one, totally</p> <p>03:24PM 13 withdrawn and very shy, quiet, scared. Scared I</p> <p>03:24PM 14 think to even consider testifying at grand jury.</p> <p>03:24PM 15 Because when I would take the two girls they are</p> <p>03:24PM 16 really so young they didn't understand what was</p> <p>03:24PM 17 going on. Why -- what even happened.</p> <p>03:24PM 18 And just to kind of set the scenario</p> <p>03:24PM 19 for you, Avalon knew the family quite well because</p> <p>03:24PM 20 she knew the defendant's mother and had lived with</p> <p>03:25PM 21 her for awhile. So Avalon was familiar with the</p> <p>03:25PM 22 defendant and his family, however, the children</p> <p>03:25PM 23 were not that familiar with Mr. Jones at all</p> <p>03:25PM 24 except for seeing him walk in the neighborhood or</p> <p>03:25PM 25 ride his bike in the neighborhood. But as far as</p>	<p style="text-align: right;">35</p> <p>03:26PM 1 because his family was neighbors and there had</p> <p>03:26PM 2 been some issues there, as well as the little</p> <p>03:26PM 3 girls being frightened to go home. The oldest</p> <p>03:26PM 4 little girl at ten had even asked me about being</p> <p>03:27PM 5 afraid of the defendant. Afraid of what would</p> <p>03:27PM 6 happen. And you know I just want -- and I hope at</p> <p>03:27PM 7 some point they can be assured that they did</p> <p>03:27PM 8 nothing wrong. Absolutely nothing wrong staying</p> <p>03:27PM 9 in your own home watching TV.</p> <p>03:27PM 10 It was a terrible circumstance and they</p> <p>03:27PM 11 did the right thing by reporting to their mother,</p> <p>03:27PM 12 and their mother did the right thing by calling</p> <p>03:27PM 13 the police. I don't think that there should be</p> <p>03:27PM 14 any victim blaming going on in this scenario</p> <p>03:27PM 15 whatsoever.</p> <p>03:27PM 16 The defendant -- he has had a lot of</p> <p>03:27PM 17 chances. I mean, he has been using alcohol he says</p> <p>03:27PM 18 since he was, like, 12. He was on misdemeanor</p> <p>03:27PM 19 probation at the time he committed this offence.</p> <p>03:27PM 20 He was in substance abuse treatment and continuing</p> <p>03:27PM 21 to use. Continued to use. And I have to worry</p> <p>03:27PM 22 about sincerity because when I read what he was</p> <p>03:27PM 23 telling that treatment provider, it was he was</p> <p>03:27PM 24 done using. Wanted to be a better man. Get out</p> <p>03:27PM 25 of the criminal justice system. Drugs was messing</p>
<p style="text-align: right;">34</p> <p>03:25PM 1 knowing him on like a "hi, Quayd" basis or</p> <p>03:25PM 2 anything, that they did not know.</p> <p>03:25PM 3 And so I looked at these two little</p> <p>03:25PM 4 girls and then I look at him. And he's, what,</p> <p>03:25PM 5 6'1, 330 pounds. We got a lot of information and</p> <p>03:25PM 6 discussions about his football career and how that</p> <p>03:25PM 7 got crushed and how that changed him. I can't</p> <p>03:25PM 8 imagine that it changed him anymore than two</p> <p>03:25PM 9 little girls watching TV in a living room, falling</p> <p>03:25PM 10 asleep and being woke up to this man.</p> <p>03:26PM 11 First after the nine-year-old who</p> <p>03:26PM 12 kicked him off and then to the other little girl.</p> <p>03:26PM 13 And she said he had oral sex with her. She</p> <p>03:26PM 14 believed it was his finger that went up her anus.</p> <p>03:26PM 15 We did find sperm there.</p> <p>03:26PM 16 And prior to this, he had just been in</p> <p>03:26PM 17 an adult woman's home trying to crawl through a</p> <p>03:26PM 18 window. And Ms. Blakley is a pretty outspoken</p> <p>03:26PM 19 woman. Went to the doorway, had a confrontation</p> <p>03:26PM 20 with him. He grabbed ahold of her. But I would</p> <p>03:26PM 21 say in a fight maybe she could even hold her own.</p> <p>03:26PM 22 I think she a pretty tough cookie. Instead of</p> <p>03:26PM 23 going home, he went straight from that house to</p> <p>03:26PM 24 the home with the two little girls.</p> <p>03:26PM 25 And they did have to change their home</p>	<p style="text-align: right;">36</p> <p>03:26PM 1 up his life and he was ready to change and be a</p> <p>03:26PM 2 new man. Well, two months before this incident he</p> <p>03:26PM 3 received a PV. That wasn't a wake up call either.</p> <p>03:26PM 4 Then he goes out, and he's not even old</p> <p>03:26PM 5 enough to drink, and he goes to bars. And this</p> <p>03:26PM 6 was the first time I had even heard of floaters,</p> <p>03:26PM 7 that you go around and take the drinks off of</p> <p>03:26PM 8 tables that other people have left behind. And</p> <p>03:26PM 9 take as many drugs as you want. And invade</p> <p>03:26PM 10 people's homes like that.</p> <p>03:26PM 11 And I know from reviewing his jail</p> <p>03:26PM 12 phone calls he had stated adamantly at the</p> <p>03:26PM 13 beginning it wasn't him, he wasn't there. Thank</p> <p>03:26PM 14 goodness there was a good description of his</p> <p>03:26PM 15 clothing. There was good surveillance video of</p> <p>03:26PM 16 his clothing. He's kinds of a hard man not to</p> <p>03:26PM 17 miss. And so then the case did come together and</p> <p>03:26PM 18 eventually he did plead.</p> <p>03:26PM 19 But you just gotta wonder, what does it</p> <p>03:26PM 20 take for a person like him to get the severity of</p> <p>03:26PM 21 his substance abuse issues, the severity of the</p> <p>03:26PM 22 trauma -- I mean, I know he says in the PSE that</p> <p>03:26PM 23 he believes the victim suffered trauma, but I am</p> <p>03:26PM 24 not sure he'll ever know the depth of trauma when</p> <p>03:26PM 25 you don't ever feel secure in your own home again.</p>

<p style="text-align: center;">37</p> <p>03:29PM 1 You don't feel secure around strangers. And at  03:29PM 2 such a young age, that isn't childhood memories.  03:29PM 3 He is 21 years of age. She a high risk  03:29PM 4 to reoffend. He has antisocial personality  03:29PM 5 characteristics. Narcissistic personality  03:29PM 6 characteristics. Poor impulse control. Severe  03:29PM 7 substance use issues. Propensity toward  03:29PM 8 aggression. Poor insight. Attitudes that support  03:29PM 9 sexual offending. And he is less amenable for sex  03:29PM 10 offender treatment than most sex offenders. He  03:29PM 11 has a low level of amenability, in fact.  03:29PM 12 He was in the middle of being  03:29PM 13 opportunistic and predatory. And it was  03:29PM 14 recommended that he be treated in a structured  03:29PM 15 environment to limit his access to potential  03:29PM 16 victims and his opportunity to commit a future  03:29PM 17 sexual offense. Less likely to comply with  03:30PM 18 supervision than a typical sex offender. And I  03:30PM 19 think, really, the addendum with the jail incident  03:30PM 20 report backs that up. He has not been absolutely  03:30PM 21 perfect while he has been in the jail. Seems to  03:30PM 22 seem somewhat self-entitled.  03:30PM 23 He was first arrested at age 16. He  03:30PM 24 had four drug related charges and one alcohol  03:30PM 25 charge between the ages of 16 to 20. Again, as I</p>	<p style="text-align: center;">39</p> <p>03:31PM 1 here and I see a lot of letters of support from  03:31PM 2 his family. They say what a nice and wonderful  03:31PM 3 guy he is. Nice and wonderful guys don't go into  03:32PM 4 strangers' homes and do what he did.  03:32PM 5 And all in all, he didn't even actually  03:32PM 6 have three victims. Not just the two minor  03:32PM 7 victims and the adult female, he has had family  03:32PM 8 that have been victimized throughout this. I  03:32PM 9 don't think a nine and ten-year old need to know  03:32PM 10 what anal sex is. I don't think they need to know  03:32PM 11 what oral sex is, and from a strange man who just  03:32PM 12 comes in.  03:32PM 13 I don't think that you can get that  03:32PM 14 drunk that you don't remember what you did or had  03:32PM 15 some kind of planning or something because he  03:32PM 16 remembers everything except for he is a little  03:32PM 17 vague on the touching. He remembers everything up  03:32PM 18 to that point when he is interviewed by the  03:32PM 19 police. Granted he did by the next day at about  03:32PM 20 11:00 still have a .04 blood alcohol, but they  03:32PM 21 didn't find -- or I don't think they ended up  03:32PM 22 testing him for any other drugs that were going on  03:32PM 23 to see if anything else was on board at all.  03:32PM 24 So you wonder, like, what is the  03:32PM 25 appropriate sentence here. And I said three plus</p>
<p style="text-align: center;">38</p> <p>03:30PM 1 said, he was on probation at the time he committed  03:30PM 2 this current offense, although misdemeanor  03:30PM 3 probation. He had a prior battery reduced to  03:30PM 4 trespassing. He has had three misdemeanor  03:30PM 5 probation violations. And at 20 is when he  03:30PM 6 participated in the six months of substance abuse  03:30PM 7 treatment. But, as I said, he appeared like he  03:30PM 8 was actively using, he just knows how to say the  03:30PM 9 words and talk the talk.  03:30PM 10 He said he used acid and mushrooms  03:30PM 11 between the ages of 18 to 19 and daily use until  03:30PM 12 age 20. He has quit all his jobs without securing  03:31PM 13 future employment. There is concerns that he  03:31PM 14 doesn't believe he needs help to control his  03:31PM 15 sexual behavior. His IQ is around average. Below  03:31PM 16 average on one score, average on the other two.  03:31PM 17 His DSM5 diagnosis was child sexual  03:31PM 18 abuse. Adult sexual abuse. Substance use  03:31PM 19 disorder, severe. Personality disorder with  03:31PM 20 antisocial and narcissistic traits, which is a  03:31PM 21 full-fledged personality disorder. And it just  03:31PM 22 continues on and on.  03:31PM 23 The concerns that the State has for  03:31PM 24 where he's at, where he sees himself and just how  03:31PM 25 serious he sees it going for him. I look through</p>	<p style="text-align: center;">40</p> <p>03:32PM 1 open. So what the State is going to ask for is  03:32PM 2 three plus seven on the burglary count. And I am  03:32PM 3 going to ask for three plus life on the L and L  03:32PM 4 count. Because just how seldom do we get a total  03:32PM 5 stranger who can victimize so many people in such  03:32PM 6 a horrific way in their own home.  03:32PM 7 There was not even -- there was no  03:32PM 8 grooming, there was just nothing. He just went  03:32PM 9 into strangers' homes. And he has known he has  03:32PM 10 had a substance abuse issue for ages. People have  03:32PM 11 tried to get him help. He has said the words that  03:32PM 12 he was getting help, and that hasn't happened.  03:32PM 13 I would ask for a \$5,000 civil fine to  03:32PM 14 be awarded to the victim in this case. I would  03:32PM 15 ask for PD reimbursement in the amount of \$400.  03:32PM 16 And I hope that this man can at some point get his  03:32PM 17 life together where he quits jeopardizing others  03:32PM 18 in the community.  03:32PM 19 Thank you.  03:32PM 20 THE COURT: Thank you.  03:32PM 21 Mrs. Comstock?  03:32PM 22 MRS. COMSTOCK: I have to say having met  03:32PM 23 Quayd and spent the time that I have spent with  03:32PM 24 him, he is a very friendly, lovable personality.  03:32PM 25 It is hard to imagine what was happening on this</p>

## APPENDIX B

<p style="text-align: center;">49</p> <p>03:46PM 1 person and everything, but at the same time I was  03:47PM 2 a teenager. I was young. I was just trying to  03:47PM 3 get away with things and still have fun.  03:47PM 4 I am still pretty young, but I am  03:47PM 5 wanting to actually make a difference now because  03:47PM 6 I have never been in this much of trouble and it's  03:47PM 7 definitely have put a scare in me. As long as I  03:47PM 8 feel like I can stay sober and stay busy, I think  03:47PM 9 that I would definitely be able to make a complete  03:47PM 10 different change.  03:47PM 11 With the rider system, the programming,  03:47PM 12 I really want programming. Not just the sex  03:47PM 13 offender programming, but especially my drug  03:47PM 14 abuse. Because I think that is what is my  03:47PM 15 biggest -- one of my biggest issues is using  03:47PM 16 drugs. I have a past history of that. I can't  03:47PM 17 hide that. And I really do want to change that in  03:48PM 18 me because I feel amazing.  03:48PM 19 I can wake up at 4:00 in the morning  03:48PM 20 and shave and stay up all day and still be  03:48PM 21 energized to this moment. Instead of sleeping in  03:48PM 22 all day and then waking up at night and then going  03:48PM 23 asleep again. I just feel a lot better with the  03:48PM 24 energy that I have without using and everything.  03:48PM 25 And I just want to be able to give back to the</p>	<p style="text-align: center;">51</p> <p>03:48PM 1 THE COURT: Okay. Mrs. Comstock, what would  03:48PM 2 be your position in terms of the restitution  03:48PM 3 having been requested?  03:48PM 4 MRS. COMSTOCK: We have no objection to the  03:48PM 5 amount of restitution or leaving it open for the  03:48PM 6 next 60 days.  03:48PM 7 MRS. COMSTOCK: It appears that the State  03:48PM 8 does have the amount today for the DNA and they  03:48PM 9 are going to get an amended order to Your Honor  03:48PM 10 for \$2,000 for the DNA testing. Obviously, that  03:48PM 11 is a large amount of restitution to pay and that  03:48PM 12 would be another reason we would ask you to impose  03:48PM 13 no additional fines.  03:48PM 14 THE COURT: Okay. So Mrs. Comstock, just so  03:48PM 15 I understand, the defense is not opposing the  03:48PM 16 restitution originally requested of \$1,167.85 or  03:48PM 17 the additional restitution, then, for the DNA  03:48PM 18 testing in the amount of \$2,000; is that right?  03:48PM 19 MRS. COMSTOCK: That's correct.  03:48PM 20 THE COURT: Okay.  03:48PM 21 MRS. GUZMAN: And I will get the Court the  03:48PM 22 corrected so you can just sign one order.  03:48PM 23 THE COURT: Okay. Thank you.  03:48PM 24 Counsel, thank you. Anything else?  03:48PM 25 MRS. COMSTOCK: No, Your Honor.</p>
<p style="text-align: center;">50</p> <p>03:48PM 1 community as well and make amends for the actions  03:48PM 2 and the mistakes that I have actually done to  03:48PM 3 everybody. Not just myself but to everybody that  03:48PM 4 I have hurt. I don't have much else to say, but I  03:48PM 5 am very apology (sic) to everybody that I have  03:48PM 6 hurt.  03:48PM 7 THE COURT: Okay. Thank you.  03:48PM 8 Counsel, is there any legal reason,  03:48PM 9 then, as to why sentence could not be imposed.  03:48PM 10 MRS. COMSTOCK: No. But I did neglect to  03:48PM 11 mention two things briefly.  03:48PM 12 THE COURT: Yes.  03:48PM 13 MRS. COMSTOCK: One is that my client does  03:48PM 14 have a niece who he would like to have contact  03:48PM 15 with. So if Your Honor does order no contact with  03:48PM 16 minors, I don't think the State was asking for  03:48PM 17 that, but he would like to have contact with his  03:48PM 18 niece to talk on the phone or writing. I wanted  03:48PM 19 to make a point of that.  03:48PM 20 And additionally, in terms of fines  03:48PM 21 fees and anything of that nature. Obviously he is  03:48PM 22 going to have significant obligations when he gets  03:48PM 23 out in terms of cost of treatment, and for that  03:48PM 24 reason we would ask the Court to not impose any  03:48PM 25 additional fines or fees.</p>	<p style="text-align: center;">52</p> <p>03:50PM 1 THE COURT: Okay. With that, then, once  03:50PM 2 again, is there any legal reason as to why  03:50PM 3 sentence could not be imposed?  03:50PM 4 MRS. COMSTOCK: No, Your Honor.  03:50PM 5 MRS. GUZMAN: No.  03:50PM 6 THE COURT: Thank you.  03:50PM 7 The Court has certainly considered the  03:50PM 8 arguments of counsel in this case. Considered the  03:50PM 9 statement by Mr. Jones himself. I have considered  03:50PM 10 Ms. Hardy's statement to the Court in terms of the  03:50PM 11 impact that this has had on her two daughters.  03:50PM 12 And in this case the Court would note  03:50PM 13 that in large part what I have heard mirrors what  03:50PM 14 was contained in the presentence materials in  03:50PM 15 terms of the incidents on the night in question.  03:50PM 16 In terms of the prior record. In terms of  03:50PM 17 Mr. Jones' upbringing. And the results of the  03:50PM 18 psychosexual evaluation.  03:50PM 19 The incident itself is extremely  03:50PM 20 troubling. It involved two separate incidents of  03:50PM 21 assault on individuals. The first of those was  03:50PM 22 Ms. Blakley. In this case there is not a plea to  03:50PM 23 that charge, and certainly Mr. Jones is not being  03:50PM 24 sentenced for that. But after that incident there  03:50PM 25 was one that -- involving the two young girls in</p>



<p style="text-align: center;">53</p> <p>03:52PM 1 this case at the residence of Octavio Gonzalez</p> <p>03:52PM 2 Rublo and the sexual assault on at least one of</p> <p>03:52PM 3 those girls. The attempted as to both, but the</p> <p>03:52PM 4 one on the one in particular. And based upon</p> <p>03:52PM 5 Ms. Hardy's statement, and not surprisingly, the</p> <p>03:52PM 6 significant trauma that the girls realized as a</p> <p>03:52PM 7 result of that.</p> <p>03:52PM 8 I did not have a chance to hear from</p> <p>03:52PM 9 Ms. Blakley today, but once again the Court would</p> <p>03:52PM 10 note the information available there to the Court</p> <p>03:52PM 11 as well as provided in the presentence materials.</p> <p>03:52PM 12 The Court acknowledges that the two</p> <p>03:52PM 13 charges for which Mr. Jones is being sentenced</p> <p>03:52PM 14 today are his first felony offences. There were</p> <p>03:52PM 15 or have been a prior record involving misdemeanor</p> <p>03:52PM 16 offences and juvenile offences, including charges</p> <p>03:52PM 17 such as possession of a controlled substance.</p> <p>03:52PM 18 Possession of drug paraphernalia. Under age</p> <p>03:52PM 19 possession or consumption of alcohol. And at</p> <p>03:52PM 20 least one charge of trespassing that was amended</p> <p>03:52PM 21 from an original charge of battery.</p> <p>03:52PM 22 As has been noted, Mr. Jones' father</p> <p>03:52PM 23 and mother are divorced. His father and</p> <p>03:52PM 24 stepmother live in Payette. His mother and other</p> <p>03:52PM 25 family members reside in Garden City. His parents</p>	<p style="text-align: center;">55</p> <p>02:55PM 1 I think it is unfortunate that the</p> <p>02:55PM 2 presentence investigator did not perform a GAIN-I</p> <p>02:55PM 3 assessment, which in this Court's opinion at least</p> <p>02:55PM 4 would have been helpful in terms of its sentencing</p> <p>02:55PM 5 decision. However, according to the presentence</p> <p>02:55PM 6 investigator the GAIN-I assessment was not deemed</p> <p>02:55PM 7 to be a valid tool due to the fact that Mr. Jones</p> <p>02:55PM 8 had been incarcerated for more than six months and</p> <p>02:55PM 9 therefore due to that extended period of forced</p> <p>02:55PM 10 sobriety the GAIN-I was not found to be a valid</p> <p>02:55PM 11 evaluation tool. The Court would note that it has</p> <p>02:55PM 12 heard that repeatedly from presentence</p> <p>02:55PM 13 investigators in terms of whether or not a GAIN-I</p> <p>02:55PM 14 should be imposed. When I have gain -- when I</p> <p>02:55PM 15 have drug and alcohol assessments performed by</p> <p>02:55PM 16 private evaluators, they have no problem</p> <p>02:55PM 17 conducting a GAIN-I assessment but, in any event,</p> <p>02:55PM 18 that is what we are confronted with.</p> <p>02:55PM 19 Fortunately, we do have the benefit of</p> <p>02:55PM 20 Dr. Johnston's psychosexual evaluation and he did</p> <p>02:55PM 21 conduct a DSM5 diagnosis that did include and show</p> <p>02:55PM 22 issues with substances, and I will get to that in</p> <p>02:55PM 23 just a few moments. As a result of the fact that</p> <p>02:55PM 24 there was no GAIN-I assessment, no mental health</p> <p>02:55PM 25 evaluation was performed either. Nonetheless, and</p>
<p style="text-align: center;">54</p> <p>02:53PM 1 divorced when he was between six to eight years of</p> <p>02:53PM 2 age. He did live primarily with his father</p> <p>02:53PM 3 immediately after the divorce. But he did start</p> <p>02:53PM 4 using drugs and eventually moved in with his</p> <p>02:53PM 5 mother in the Boise area.</p> <p>02:53PM 6 He continued to use drugs, and his drug</p> <p>02:54PM 7 of choice was, as has been noted, LSD. He does</p> <p>02:54PM 8 not recall a lot of what happened as a child</p> <p>02:54PM 9 because of his reported use of LSD and the impact</p> <p>02:54PM 10 that has had on his memory. He does indicate that</p> <p>02:54PM 11 there was no physical or sexual abuse of which he</p> <p>02:54PM 12 was aware, and described his father as a</p> <p>02:54PM 13 functioning alcoholic. I will note that there was</p> <p>02:54PM 14 some information later in the report that perhaps</p> <p>02:54PM 15 provided a somewhat different picture in terms of</p> <p>02:54PM 16 his upbringing, but I will turn that here in just</p> <p>02:54PM 17 a few moments.</p> <p>02:54PM 18 In this case as Mrs. Comstock has</p> <p>02:54PM 19 noted, Mr. Jones broke his knees when he was</p> <p>02:54PM 20 between 16 or 17 years of age in cliff jumping.</p> <p>02:54PM 21 And indications were that things went downhill</p> <p>02:54PM 22 after that, as has been noted. In this situation</p> <p>02:54PM 23 there is no question in this case of the</p> <p>02:55PM 24 significant substance abuse issues from which</p> <p>02:55PM 25 Mr. Jones does suffer.</p>	<p style="text-align: center;">56</p> <p>02:55PM 1 due to Dr. Johnston's psychosexual evaluation, we</p> <p>02:55PM 2 have the benefit of a mental health diagnosis as</p> <p>02:55PM 3 to Mr. Jones as well in that regard.</p> <p>02:55PM 4 In terms of Mr. Jones' issues with</p> <p>02:55PM 5 controlled substances, he certainly consumes</p> <p>02:55PM 6 alcohol and has -- and marijuana since the age of</p> <p>02:55PM 7 13. LSD since the age of 17. And did use ecstasy</p> <p>02:57PM 8 when he was 19 years of age. Dr. Johnston's</p> <p>02:57PM 9 psychosexual evaluation, I think, provides some</p> <p>02:57PM 10 real insight in terms of Mr. Jones and his</p> <p>02:57PM 11 background and his issues with substances as well</p> <p>02:57PM 12 as the troubling aspects of the sex abuse that</p> <p>02:57PM 13 occurred in this case.</p> <p>02:57PM 14 As I had noted previously in the</p> <p>02:57PM 15 statement to the presentence investigator, there</p> <p>02:57PM 16 was no reported history of abuse. However, in the</p> <p>02:57PM 17 psychosexual evaluation Dr. Johnston noted that</p> <p>02:57PM 18 Mr. Jones' mother did report that, in fact,</p> <p>02:57PM 19 Mr. Jones was abused by his father when he was a</p> <p>02:57PM 20 child.</p> <p>02:57PM 21 In this case there was a note of drug</p> <p>02:57PM 22 use in the family home. We have already mentioned</p> <p>02:57PM 23 the fact that it his father being, as he</p> <p>02:58PM 24 described, a functioning alcoholic. His mother has</p> <p>02:58PM 25 had some substance abuse issues as well</p>

<p style="text-align: center;">57</p> <p>00:56PM 1 apparently. And, in fact, Mr. Jones did  00:56PM 2 acknowledge to Dr. Johnston first using LSD and  00:56PM 3 other substances, including mushrooms, at 18 or  00:56PM 4 19. And using that daily until he was 20 years of  00:56PM 5 age.  00:56PM 6 There were a series of psychological  00:56PM 7 assessments performed by Dr. Johnston in his  00:56PM 8 report. Included among those was an MMPI-2. The  00:56PM 9 profile there was an individual who was withdrawn  00:56PM 10 and isolated and has a tendency to deny problems  00:56PM 11 and has a low self esteem. The PAI assessment  00:56PM 12 tool did indicate a possible diagnosis for  00:56PM 13 substance dependence and personality disorder with  00:56PM 14 antisocial and narcissistic traits. The Court  00:56PM 15 would note that it appears to be born out by the  00:56PM 16 DSM-5 diagnosis, which I will get to in just a  00:56PM 17 moment.  00:56PM 18 The PPIR did not note any prototypical  00:56PM 19 conduct of a psychopath. The MSI-2 noted that  00:56PM 20 Mr. Jones appeared to be highly defensive in his  00:56PM 21 responses, especially as to his issues of sexual  00:56PM 22 interest and desire. And in this case the  00:56PM 23 STAXI-2, S-T-A-X-I 2, noted that Mr. Jones' method  00:56PM 24 of dealing with anger is either through a calming  00:56PM 25 or relaxing as a way of dealing with that.</p>	<p style="text-align: center;">59</p> <p>04:01PM 1 In this case, considering all of the  04:01PM 2 information available, including the static and  04:01PM 3 dynamic variables and other information provided,  04:01PM 4 Dr. Johnston's conclusion was that Mr. Jones  04:01PM 5 should receive treatment in a structured setting,  04:01PM 6 which this Court interprets as meaning in a  04:01PM 7 correctional facility, to limit his access to  04:01PM 8 future victims and his opportunity for future  04:01PM 9 sexual offenses. He was determined, as  04:01PM 10 Mrs. Guzman has noted, to have a low amenability  04:01PM 11 to sex offender treatment. And was also seen a  04:01PM 12 low likelihood of complying with supervision than  04:02PM 13 the typical sex offender.  04:02PM 14 The Court acknowledges the numerous  04:02PM 15 letters of support for Mr. Jones contained in the  04:02PM 16 presentence materials. Including from his  04:02PM 17 parents. From his stepmother. From his brother.  04:02PM 18 A niece. A cousin. A friend named Charleen  04:02PM 19 Freemond (phonetic). And a home care provider  04:02PM 20 named Misty Hader (phonetic). The common theme in  04:02PM 21 all of those letters of support is that Mr. Jones  04:02PM 22 indeed, basically, is a good person who cares for  04:02PM 23 his family. And that has had trouble when, due to  04:02PM 24 his injuries, he again began using substances  04:02PM 25 and, as was noted, was no longer able to play</p>
<p style="text-align: center;">58</p> <p>03:50PM 1 The SASSI-3, high probability of  03:50PM 2 moderate to severe substance use disorder. And as  03:50PM 3 Mrs. Guzman had noted, the Shipley-2 test results  03:50PM 4 did place him in the mod -- average category in  03:50PM 5 terms of his cognitive abilities. The DSM-5  04:00PM 6 diagnosis included child sexual abuse, as has been  04:00PM 7 noted. Adult sex abuse by a nonspouse or  04:00PM 8 nonpartner. Substance use disorder, severe. And  04:00PM 9 other specific personality disorder with  04:00PM 10 antisocial and narcissistic traits.  04:00PM 11 His risk to reoffend. In considering  04:00PM 12 the Static-99 static risk factors and the  04:00PM 13 Stable-2007 dynamic risk factors, and when  04:00PM 14 considered conjointly, Dr. Johnston noted that  04:00PM 15 Mr. Jones should be considered a very high risk to  04:00PM 16 reoffend. However, ultimately, Dr. Johnston's  04:00PM 17 conclusion was that Mr. Jones posed a high risk to  04:00PM 18 reoffend within the next five to ten years as  04:00PM 19 compared to other sex offenders. He was described  04:00PM 20 as being in the middle, as has been noted, between  04:01PM 21 opportunistic and predatory in terms of his  04:01PM 22 interaction with others. And Dr. Johnston did  04:01PM 23 note that the closer an individual is to being  04:01PM 24 predatory, the more difficult it would be to  04:01PM 25 contain behavior through monitoring and treatment.</p>	<p style="text-align: center;">60</p> <p>04:02PM 1 football. And the belief was as a result of that  04:02PM 2 event in his life that is when things really  04:02PM 3 started spiralling downhill for him.  04:03PM 4 The Court also had the benefit of a  04:03PM 5 letter from Sharon Patterson, the great  04:03PM 6 grandmother of the victim in this case, Alinda  04:03PM 7 Gonzalez (phonetic). Noting the impact of the  04:03PM 8 crime on the whole family, much as Ms. Hardy has  04:03PM 9 in her statement to the Court today. But noting  04:03PM 10 specifically as to the victim in this case, the  04:03PM 11 expressions of fear, of crying and to the point of  04:03PM 12 actually bedwetting as well.  04:03PM 13 In the addendum to the presentence  04:03PM 14 material the jail incident reports did indicate  04:03PM 15 that Mr. Jones did engage in inappropriate  04:03PM 16 activity with another jail inmate. And there was  04:03PM 17 at least one report of a fight as well in the jail  04:03PM 18 incident reports.  04:03PM 19 The LSIR score, and I simply note this  04:03PM 20 for the record, was a 29, which is a moderate risk  04:03PM 21 to reoffend. The Court does not find the LSIR to  04:03PM 22 be of any great use to the Court in its sentencing  04:04PM 23 decision. In this situation the Court finds the  04:04PM 24 more informative information to be from the  04:04PM 25 psychosexual evaluation in terms of in fact</p>

<p style="text-align: center;">61</p> <p>04:04PM 1 Mr. Jones' risk to reoffend.</p> <p>04:04PM 2 I appreciated Mrs. Comstock's comments</p> <p>04:04PM 3 about how Mr. Jones had attempted to deal with</p> <p>04:04PM 4 this circumstance with his incarceration, with the</p> <p>04:04PM 5 offences to which he has pled guilty and for which</p> <p>04:04PM 6 he is being sentenced today. But the Court did</p> <p>04:04PM 7 note that the presentence investigator expressed</p> <p>04:04PM 8 concern that Mr. Jones did not appear to recognize</p> <p>04:04PM 9 the gravity of his offence and how his actions</p> <p>04:04PM 10 impacted the victims, although acknowledging that</p> <p>04:04PM 11 he did show remorse for his crimes. In this case</p> <p>04:04PM 12 the conclusion was that he was not appropriate for</p> <p>04:04PM 13 probation under the circumstances and did</p> <p>04:04PM 14 recommend incarceration with treatment.</p> <p>04:04PM 15 The Court has noted and has considered</p> <p>04:04PM 16 all the information available to it for purposes</p> <p>04:04PM 17 of sentencing in this case. I have noted the</p> <p>04:04PM 18 factors that I have considered, including the</p> <p>04:04PM 19 psychosexual evaluation. Issues with Mr. Jones'</p> <p>04:04PM 20 upbringing. Issues with his substance abuse and</p> <p>04:04PM 21 the other concerns that have been raised.</p> <p>04:04PM 22 In this situation the Court in imposing</p> <p>04:04PM 23 sentence as always is guided by the Toohill</p> <p>04:04PM 24 factors. Its primary consideration is and must be</p> <p>04:04PM 25 protecting the community. If I do nothing else, I</p>	<p style="text-align: center;">63</p> <p>04:07PM 1 is going to impose the following sentence.</p> <p>04:07PM 2 I am going to enter a judgment of</p> <p>04:07PM 3 conviction as to each of the two counts for which</p> <p>04:07PM 4 Mr. Jones is being sentenced today. Count III,</p> <p>04:07PM 5 the burglary charge. Count IV, the L and L</p> <p>04:07PM 6 charge.</p> <p>04:07PM 7 As to Count III, the burglary charge,</p> <p>04:07PM 8 Mr. Jones, I will sentence you to the custody of</p> <p>04:07PM 9 the Board of Correction for a term of ten years.</p> <p>04:07PM 10 The first three years of that sentence will be</p> <p>04:07PM 11 fixed, followed by seven years indeterminate.</p> <p>04:07PM 12 As to Count IV, the L and L charge, I</p> <p>04:07PM 13 will sentence you to the custody of the Board of</p> <p>04:07PM 14 Correction for a term of 28 years. The first</p> <p>04:07PM 15 three years of that sentence will be fixed,</p> <p>04:07PM 16 followed by 25 years indeterminate.</p> <p>04:08PM 17 Those two sentences will run</p> <p>04:08PM 18 concurrently, one with the other. And in this</p> <p>04:08PM 19 case you will receive credit for the almost eight</p> <p>04:08PM 20 months that you have been in custody in this case</p> <p>04:08PM 21 already as to each count. A total of 231 days.</p> <p>04:08PM 22 There being no opposition from the</p> <p>04:08PM 23 defense, restitution will be ordered in a total</p> <p>04:08PM 24 amount of \$3,167.85. And the Court will sign a</p> <p>04:08PM 25 civil judgment and order of restitution in that</p>
<p style="text-align: center;">62</p> <p>04:05PM 1 must ensure that by the sentence I impose the</p> <p>04:05PM 2 community is protected. I do have other</p> <p>04:05PM 3 considerations of punishment, deterrence, both</p> <p>04:05PM 4 general and specific, and rehabilitation.</p> <p>04:05PM 5 Candidly, in this case all of those considerations</p> <p>04:05PM 6 are factors for the Court in terms of its</p> <p>04:05PM 7 sentencing decision.</p> <p>04:05PM 8 And while I appreciate Mrs. Comstock's</p> <p>04:05PM 9 advocacy for her client and her comments that if,</p> <p>04:05PM 10 in fact, he can get his substance abuse issues</p> <p>04:05PM 11 addressed, he will not pose a significant risk to</p> <p>04:05PM 12 the community as a result in light of the</p> <p>04:05PM 13 information provided by his family in terms of</p> <p>04:05PM 14 their experiences with him.</p> <p>04:05PM 15 The reality is, that the psychosexual</p> <p>04:05PM 16 evaluation paints a different picture. And paints</p> <p>04:05PM 17 a picture of an individual who poses a real risk</p> <p>04:05PM 18 to the community of future sex offence. And in</p> <p>04:05PM 19 this situation raises a significant concern for</p> <p>04:05PM 20 the Court in terms of its sentencing decision.</p> <p>04:07PM 21 Under the circumstances, the Court</p> <p>04:07PM 22 feels that this is not a case for probation. And</p> <p>04:07PM 23 because it is not a case for probation, the Court</p> <p>04:07PM 24 does not feel that this is a case for retained</p> <p>04:07PM 25 jurisdiction. Therefore, the Court in this case</p>	<p style="text-align: center;">64</p> <p>04:08PM 1 amount.</p> <p>04:08PM 2 I will recommend to the Board of</p> <p>04:08PM 3 Correction that you be considered for any and all</p> <p>04:08PM 4 forms of therapeutic counseling while in their</p> <p>04:08PM 5 custody, including sex offender treatment and</p> <p>04:08PM 6 substance abuse treatment.</p> <p>04:08PM 7 In this situation I will not impose any</p> <p>04:08PM 8 fine. I will not impose any public defender</p> <p>04:08PM 9 reimbursement. I will in this case impose court</p> <p>04:08PM 10 costs.</p> <p>04:08PM 11 I will advise you, sir, of your right</p> <p>04:08PM 12 to appeal this decision of the Court. Any appeal</p> <p>04:08PM 13 has to be filed within 42 days from the date the</p> <p>04:08PM 14 judgment enters. If you are an indigent person</p> <p>04:08PM 15 and cannot afford your own attorney, one could be</p> <p>04:08PM 16 appointed for you at state expense to help you</p> <p>04:08PM 17 prosecute your appeal. Furthermore, the cost of</p> <p>04:08PM 18 the appeal could be at state expense, as well.</p> <p>04:08PM 19 In light of the Court's sentence I am</p> <p>04:08PM 20 not going to, Mrs. Comstock, be imposing any</p> <p>04:08PM 21 specific order prohibiting contact with underage</p> <p>04:08PM 22 individuals. But I am going to grant the State's</p> <p>04:08PM 23 motion for the no-contact order as to the victims</p> <p>04:08PM 24 in this case, Ms. Blakley, Ms. Hardy, Alea</p> <p>04:08PM 25 Gonzalez and Lovia Gonzalez. And indicate there</p>